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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1352nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 26 July 1994, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE COVENANT (agenda item 5) (continued)

Communication from Mr. Ashby (document not yet circulated)

1. The CHAIRMAN said that the Committee had decided to consider the case of Mr. Ashby at a public meeting because of the unusual circumstances surrounding it.

2. For the past 8 years, the Human Rights Committee had received and considered well over 100 cases involving the question of capital punishment. In a large number of cases in which the Committee had adopted decisions on the merits, it had found violations of the Covenant by the State party concerned, in particular concerning the complainant's right to a fair trial.

3. In all capital punishment cases considered by the Committee in which the complainant had substantiated his allegations in such a way as to warrant a thorough examination of his case, the Committee, through its Special Rapporteur for New Communications, requested the State party not to execute the petitioner while his case was under consideration by the Committee. The idea was for the State to apply interim measures of protection, as called for by rule 86 of the Committee's rules of procedure (CCPR/C/3/Rev.3), which was designed to prevent "irreparable damage" being done to the author of a complaint.

4. To date, in over 100 cases, States parties that had been requested to apply interim measures of protection had respected the request.

5. On 14 July 1994, Trinidad and Tobago had executed Mr. Ashby, in spite of the request for interim measures of protection formulated by the Committee. It was that serious situation which the Committee wished to debate in public.

6. On 7 July 1994, the Committee had received a formal communication filed on Mr. Ashby's behalf under the Optional Protocol to the Covenant. The complaint alleged violations by Trinidad and Tobago of his rights under the Covenant, including violations of his right to a fair trial and his right not to be subjected to cruel, inhuman or degrading treatment. The case had been registered and submitted to the Special Rapporteur for New Communications. On 12 July 1994, the Trinidadian authorities had issued a warrant for Mr. Ashby's execution on 14 July 1994.

7. In the morning of 13 July 1994, the Special Rapporteur had issued a decision under rule 86 of the rules of procedure, requesting the Government not to execute Mr. Ashby while his complaint was under consideration by the Committee.

8. That request had been handed to the Permanent Mission of Trinidad and Tobago on 13 July 1994 at 4.05 p.m., Geneva time (10.05 a.m., Trinidad and Tobago time). According to the Permanent Mission, it had been transmitted to the competent authorities in Port-of-Spain between 4.30 p.m. and 4.45 p.m. on the same day.

9. On 14 July at 2.30 p.m., the Committee had been informed that Mr. Ashby had been executed in the early morning (Trinidad and Tobago time). During its meeting on 15 July 1994, the Committee had discussed the matter and decided to request the Government to provide specific information about the circumstances surrounding the execution of Mr. Ashby, in particular the exact time at which the State party had received the Committee's request and the exact time of the author's execution and of the court orders, if any, granting a stay of execution. The Committee had invited the State party to send a representative to furnish those clarifications at the Committee's meeting scheduled for the afternoon of 20 July 1994. The request for information had been transmitted to the Permanent Mission of Trinidad and Tobago on 15 July 1994 at 2.30 p.m.; the Mission had acknowledged receipt on the same day.

10. On 20 July 1994, the State had transmitted to the Committee, under cover of a note verbale, an undated media release purporting to clarify the circumstances surrounding Mr. Ashby's execution. The Committee had studied the media release and regretted that no replies had been given to its specific questions. It had noted with concern that the State party had failed to explain why it had not complied with the Committee's request for interim measures of protection, and that neither the Optional Protocol proceedings in the case nor the Committee were mentioned in the media release. The Committee had then decided to convene a public meeting on 26 July 1994, once again inviting a State party representative to provide the information it had initially requested.

11. The Committee was concerned that the State party's failure to comply with its request for a stay of execution might have serious repercussions in respect of other capital punishment cases pending under the Optional Protocol. It was imperative to prevent the recurrence of such a situation. The Committee would continue its consideration of Mr. Ashby's complaint.

12. Mr. AGUILAR said he was very concerned by the fact that Trinidad and Tobago had not sent a representative to explain the circumstances surrounding Mr. Ashby's execution, even though the Committee had twice asked it to do so. It was also a matter of great concern that the Optional Protocol was not mentioned at all in the media release. In his opinion, Trinidad and Tobago had carried out an extrajudicial execution, and the Committee should react strongly.

13. Mr. LALLAH said that the incident was unprecedented and extremely serious. When a State became a party to the Optional Protocol, it recognized the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claimed to be victims of a violation by that State party of any of the rights set forth in the Covenant. To ensure the exercise of its competence, the Committee had found it necessary to adopt certain provisions: rule 86 of the Committee's rules of procedure authorized it to recommend that a State party should stay the execution of a person sentenced to death in order to avoid irreparable damage before the Committee was able to consider the case. The Committee expected the State party concerned to observe that rule, which had proved effective in more than 100 cases. Regrettably, Trinidad and Tobago had deliberately ignored the Committee's request for the adoption of interim measures of protection.

14. He agreed with other members of the Committee that the attitude of Trinidad and Tobago, which cast doubts on the Committee's competence and the implementation of the Optional Protocol, should be condemned.

15. Mrs. EVATT said that, when Trinidad and Tobago had acceded to the Covenant in 1979, it had undertaken to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, including of course, the right to life. It had also undertaken to ensure that any person whose rights had been violated would have an effective remedy. In acceding to the Optional Protocol, Trinidad and Tobago had recognized the competence of the Committee to consider communications from individuals who claimed to be victims of a violation of any of the rights set forth in the Covenant. To impose and carry out capital punishment arbitrarily, without a fair trial and under conditions in which remedies had not been exhausted, was a violation of the rights of the accused and a derogation from the State party's obligations under the Covenant. The sentence had been carried out before the Committee had been able to examine the case. The State party had therefore failed to guarantee Mr. Ashby's right to a remedy and had refused to recognize that it might be bound to provide a remedy. That attitude was highly regrettable on the part of a State which had been a party to the Covenant since 1979, and she supported the steps proposed by the Chairman.

16. Mr. MAVROMATTIS said he regretted that Trinidad and Tobago had taken absolutely no notice of the Committee's request. He was surprised by that attitude, as he had thought that the country respected the rights of its citizens. He also regretted that the State party had not seen fit to reply to the Committee's specific questions, especially when it had had two occasions on which to do so. The country's silence on the case meant that it could not provide any worthwhile explanation. He hoped that the authorities would prevent the recurrence of any such situation, as otherwise Trinidad and Tobago would risk being considered as a country where human rights were not observed, with all the consequences that entailed.

17. Mr. FRANCIS said that he particularly regretted the behaviour of Trinidad and Tobago in the present case, as he himself was from the Caribbean. Such a situation should never have arisen, and he wondered what could have induced the authorities not to comply with the Committee's request for the adoption of interim measures of protection. The Court of Appeals of Trinidad and Tobago had been considering the case, and the Privy Council had decided on the morning of 14 July to send the authorities a request for a stay of execution. That request had been futile, as Mr. Ashby had been executed at approximately 6.40 a.m. on 14 July. He wondered why the authorities had not awaited the decision of their own Court of Appeals. The execution was all the more serious in that Mr. Guerra and Mr. Wallen (communication Nos. 575/1994 and 576/1994, respectively), both of whom had been sentenced to death by Trinidad and Tobago, had been granted a stay of execution.

18. The Clerk of the Court of Appeals had been asked to attend the meeting scheduled to be held at 6 p.m. on 14 July in order to communicate any decision

of the Court to the Government. The Clerk had not, however, been present at the meeting and had appeared only after Mr. Ashby's execution. The question arose as to whether the Clerk's absence had been deliberate or not.

19. Furthermore, in the media release sent to the Committee, the authorities had justified the execution by stating that the order had already been pronounced. Yet, in a similar case, at least three stays of execution had been granted. There was therefore no basis for the argument. In addition, the authorities' order indicated that the sentence should have been carried out between 6 a.m. and noon. The question therefore arose as to why Mr. Ashby had been executed so early in the morning of 14 July.

20. He was anxious to hear the State party's explanations.

21. Mr. BRUNI CELLI noted that, according to the Covenant, in countries which had not abolished the death penalty, sentence of death could be imposed only for the most serious crimes, and in that case, all remedies should have been exhausted. Rule 86 of the Committee's rules of procedure had in fact been designed to guarantee that that right was observed. The Committee could only regret the failure to respect its request under rule 86. He agreed with other members about expressing the Committee's indignation and hoped that such a situation would never recur.

22. Mr. POCAR said that he agreed with the other members of the Committee. By executing Mr. Ashby when the Special Rapporteur had called for interim measures under rule 86 of the rules of procedure, the authorities had clearly fallen short of their obligations under the Covenant and the Optional Protocol. Under article 1 of the Protocol, every State party to the Protocol recognized the competence of the Committee to receive and consider communications from individuals subject to that State's jurisdiction. Each State party also had the legal obligation to cooperate with the Committee when it considered communications concerning that State party, and at the very least it must allow it to examine those communications in the most effective possible manner. That was an obligation which the State party had to fulfil in good faith. As to the Covenant, under article 39, the Committee established its own rules of procedure, and no State party had ever contested any of the provisions of those rules, including rule 86. By ignoring those provisions, Trinidad and Tobago had clearly prevented the Committee from examining the communication of Mr. Ashby in the most effective way. The Committee would none the less continue its consideration of the case, but it obviously would have preferred to do so before the author's death.

23. Even though the death penalty had not been abolished in Trinidad and Tobago, the authorities had violated article 6 of the Covenant. Referring to the Committee's jurisprudence in that field, he stressed that States parties which had not abolished the death penalty were nevertheless bound to respect all existing legal guarantees when applying it. Furthermore, Trinidad and Tobago was bound to apply the guarantees called for by the Optional Protocol, which it had accepted by acceding to that instrument. He noted with regret that the authorities had not responded to any of the Committee's requests to send a representative to the meetings at which the Ashby case was to be considered or to provide information on the circumstances surrounding his execution. The media release in no way constituted a reply to the questions

asked. The Committee should strongly condemn the attitude of the authorities. He hoped that the incident would not set a precedent and that the State party would agree to any measures the Committee might wish to adopt in the case under consideration.

24. Mrs. HIGGINS said that, like the other members of the Committee, she was dismayed by Mr. Ashby's execution, given that the Special Rapporteur had expressly asked the State party to take interim measures in accordance with rule 86 of the rules of procedure. She drew particular attention to article 1 of the Optional Protocol. The Committee was clearly not in a position to consider a communication under the normal procedure if its author was dead. Under article 2, paragraph 3 (a), of the Covenant, the State party undertook to ensure that any person whose rights or freedoms as recognized in the Covenant were violated would have an effective remedy. In the present case, Mr. Ashby had been executed, and the Committee had been prevented from determining whether the State party had violated the provisions of the Covenant. Given those two facts, the Committee could justifiably conclude on the merits that Mr. Ashby had not had any remedy. It was precisely to avoid a situation of that sort that the Committee had adopted rule 86.

25. Heretofore, all States parties concerned by communications from individuals sentenced to death had always agreed to the Committee's requests under rule 86. Trinidad and Tobago's attitude towards to Mr. Ashby confirmed once again the need for the measures called for by that rule. The procedure under the Optional Protocol had not at all been imposed on States, which had freely chosen it by becoming parties to that instrument. Trinidad and Tobago had voluntarily acceded to the Covenant and the Optional Protocol. Moreover, it had been a party to the Covenant since 1979, and the authorities were well acquainted with the Committee's procedure; they knew that the Committee carefully examined each communication submitted to it; in some cases, it declared itself competent and in others not, according to specific criteria set forth in the Optional Protocol.

26. No mention was made in the media release of either the Covenant or the Optional Protocol, which raised doubts as to the good faith of the authorities. In addition, the Committee still did not know why they had executed Mr. Ashby so hastily. The media release was in no way a reply to the Committee: it was, quite simply, an insult. The only explanation that the authorities had provided - and again, not directly to the Committee - was that public opinion demanded Mr. Ashby's execution. In her opinion, that argument was quite inadmissible, coming as it did from a State party that had ratified the Covenant and the Optional Protocol of its own free will.

27. If the Committee had been able to consider the communication under the usual conditions, it might have concluded that the Covenant had not been violated by the State party. One thing, however, was certain: Trinidad and Tobago had violated the provisions of both the Covenant and the Optional Protocol. With respect to the Covenant, no matter what the merits of Mr. Ashby's complaint, it was clear that the State party had violated article 6, given that it had ignored the guarantees called for by the Optional Protocol. The State party had also violated that instrument by refusing to

cooperate with the Committee, particularly by failing to reply to the questions asked and to cooperate more generally with the Committee's procedure.

28. Under the circumstances, she was also worried about the cases of Mr. Guerra and Mr. Wallen (communications Nos. 575/1994 and 576/1994, respectively). Those two communications, which also concerned Trinidad and Tobago, had been submitted to the Committee on 25 March 1994, and in both instances the authorities had already ordered the death sentence to be carried out. On 21 April 1994, the Special Rapporteur, under rule 86 in conjunction with rule 91 of the rules of procedure, had asked the authorities not to execute Mr. Guerra and Mr. Wallen while their communications were being considered by the Committee. Moreover, a decision by the Court of Appeals of Trinidad and Tobago was pending in both cases. The legal division of the Privy Council had already asked the authorities to grant a stay of execution in both cases. The Committee should therefore press the authorities to comply with the request made under rule 86.

29. She condemned Mr. Ashby's execution and proposed that the Committee should strongly assert that such incidents should be avoided in the future, and that the State party was bound to grant the Committee's request under rule 86 in respect of Mr. Guerra and Mr. Wallen.

30. Mr. EL SHAFEI said that the Chairman's statement accurately reflected the indignation of the Committee as a whole in the face of the authorities' refusal to fulfil their obligations under the Optional Protocol. It was not the first time that Trinidad and Tobago had been invited by the Committee to grant a stay of execution to the author of a communication, and the authorities were well acquainted with the Committee's rules of procedure and working methods. Furthermore, the State party had not responded to the requests for information on the circumstances surrounding Mr. Ashby's execution, particularly the date on which the State party had received the request from the Special Rapporteur. There was in any case no doubt that the State party had received the request; but instead of replying to it, it had simply sent the Committee a media release. Moreover, the Committee had twice asked the authorities to send a representative to the meetings at which Mr. Ashby's case was to be considered, but in those instances as well, its request had gone unanswered.

31. He shared the concerns of other Committee members over the State party's failure to cooperate. The Covenant and the Optional Protocol were international instruments which bound all States that were parties to them. The authorities of Trinidad and Tobago were seriously in breach of their obligations, and that question should be taken up by the other States parties to the Optional Protocol.

32. Mr. SADI said that he had little to add to what had already been said, except that the case of Mr. Ashby was particularly distressing. The State party had obviously taken both the work and the mandate of the Committee very lightly. It had completely ignored the request for a stay of execution, and now that Mr. Ashby was dead, there was no hope of being able to remedy any mistakes that might have been committed during his trial. The authorities owed the Committee an explanation, but they owed one to Mr. Ashby's family

even more. Mr. Ashby must not have been executed in vain. He had been the victim of a very grave miscarriage of justice, and it was extremely important that Mr. Guerra and Mr. Wallen (communications Nos. 575/1994 and 576/1994) should not undergo the same fate.

33. Mr. PRADO VALLEJO said that he also regretted what had happened. The Committee was faced with an unacceptable situation. The Special Rapporteur had acted diligently and in good conscience by invoking rule 86 of the rules of procedure. Nevertheless, it was clear that the State party had not honoured its obligations under the Covenant and the Optional Protocol. It had committed a flagrant violation of article 6 of the Covenant, which was completely inadmissible, as all States parties to the Covenant had to fulfil their obligations thereunder in good faith. Furthermore, the authorities had not provided any clarification as to the circumstances surrounding Mr. Ashby's execution, merely contenting themselves with sending the Committee a media release in which the Committee was not even mentioned. To date, the State party had not given any justification for its attitude. In capital cases, the Committee had always asked the States parties concerned to proceed with the greatest circumspection and respect for their international obligations. Others besides Mr. Ashby were awaiting execution in Trinidad and Tobago, and it was to be hoped that the authorities would fulfil their obligations towards them. It was also to be hoped that the State party would understand the gravity of its actions and in future honour its commitments in good faith.

34. As to Mr. Ashby's case, under the Optional Protocol, it was important for the Committee to continue its consideration of the communication. At a time when there was a worldwide trend towards the abolition of the death penalty, Trinidad and Tobago had taken an unacceptable step in quite the opposite direction by hastily executing a man who had asked that justice should be done. Under the circumstances, in due course the Committee should ask the authorities for a special report on the implementation of article 6 of the Covenant in their country.

35. Mr. WENNERGREN said that he very much regretted what had happened on 14 July 1994 and considered that, by deliberately disregarding the Committee's request for a stay of execution, the State party had committed a flagrant violation of the Committee's rules of procedure. The most serious aspect, of course, was that Mr. Ashby had lost his life because of the conduct of the State party. The circumstances surrounding his execution were not clear and, as far as could be determined, were complicated. For the present, it was important that the Committee should obtain full information that would enable it to shed light on the events of 14 July. It was only subsequently that the Committee would be able to determine whether or not article 6 of the Covenant had been violated. The Committee must stress that the State party's conduct was unacceptable and that such a situation should never be repeated.

36. Mr. NDIAYE, commenting that everything he had intended to say had already been said before him, said that he joined in the strong condemnation of the State party's action.

37. Mr. BÁN said that he shared the sorrow and indignation of the other members of the Committee. It seemed particularly serious that a State party had not only failed to fulfil its obligations under the Covenant and the

Optional Protocol but had also shown itself to be passive by refusing all cooperation with the Committee. Irreparable damage had already been done, and the Committee should insist on the need to clarify under what circumstances and for what reasons it had taken place. That information was very important, as it could prevent the recurrence of such incidents. The Committee should continue its investigation into Mr. Ashby's case and endeavour to obtain assurances from the State party that there would be no repetition.

38. Mrs. CHANET said that, in her capacity as Special Rapporteur, she had submitted the request to Trinidad and Tobago which the authorities had refused to grant. She therefore agreed with what had been said by the other members of the Committee.

39. Mrs. HIGGINS noted that the Committee had decided to adopt a new format for its annual report, which would highlight the cooperation or lack of cooperation by a State party, whether in regard to submission of reports or communications. With that decision in mind, Mr. Ashby's case should be given a prominent place in the annual report to be adopted at the end of the current session.

40. The CHAIRMAN agreed with Mrs. Higgins and asked the Rapporteur to see that her suggestion was carried out.

41. He proposed that the Committee should adopt a text in which it would express its deep concern over Mr. Ashby's execution. In that text, the Committee could express its regret that the authorities of Trinidad and Tobago had not agreed to its request. That attitude was unprecedented, because to date such requests had always been granted by the States parties concerned. Furthermore, the attitude of the authorities was in flagrant breach of their obligations under the Covenant and the Optional Protocol. The Committee could also deplore the State party's failure to make available a representative for the meetings at which Mr. Ashby's case would be considered, as it had been invited to do. The Committee had received a media release from Trinidad and Tobago which answered none of its questions. The Committee could conclude by urging the State party to ensure, by all means at its disposal, that similar situations did not recur. The Committee could recall that the State party was bound to fulfil its obligations under the Covenant and the Optional Protocol. It should insist on the need for a favourable reply by the authorities of Trinidad and Tobago to the requests sent by the Special Rapporteur with regard to Mr. Guerra and Mr. Wallen (communications Nos. 575/1994 and 576/1994).

42. Mr. LALLAH said that the Chairman's proposal reflected the wishes of the Committee. It was very important to stress the need for the State party to respect its international obligations. That issue was all the more important in the cases of Mr. Guerra and Mr. Wallen in that the Court of Appeals was shortly expected to render a decision. The Committee should adopt a text based on the ideas proposed by the Chairman as quickly as possible.

43. Mr. MAVROMMATIS said that, following its present meeting, the Committee should also issue a press release. He agreed to the suggestion about mentioning Mr. Ashby's case in the annual report but would go even further: that case could be the subject of a special section of the report, given the

grave consequences of the State party's failure to cooperate. It was also important that the Committee should clearly state its intention to continue considering Mr. Ashby's communication.

44. Mr. FRANCIS said that the Committee should avoid using verbs such as "condemn" and "deplore" in the text to be adopted. It was true that the authorities of Trinidad and Tobago had committed irreparable damage, but the Committee should try to use wording that was generally acceptable to its members, and he was in favour of using measured language.

45. The CHAIRMAN said that, based on his proposal and the suggestions by members of the Committee, the Secretariat could be asked to draft a decision for adoption by the Committee which would be distributed to the members in the coming hours. In addition, a reminder could be addressed to the State party by the Special Rapporteur and the Secretariat could be asked to draft and issue a press release, a copy of which would be sent to the State party.

46. It was so decided.

The meeting rose at 4.35 p.m.